

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1 The petitioner's husband indicated at the hearing that he might want to challenge the actual calculation of the overpayment by submitting paystubs showing that the Department had used incorrect earnings figures. He was given leave to do so but after one month had provided no new information. It must be concluded, therefore, that the Department's figures are correct.

2. The petitioner's husband says that he did give information to the Department in July, 1999 that he would start receiving the attendant care income soon. Report forms which the Department has for July through September of 1999 show that the petitioner reported no income during those months. The petitioner presented a letter from the Department dated October 6, 1999 thanking him for reporting the change and asking him to verify the amounts. The Department says that it actually received the information that the husband had started to receive income from the attendant care program and that actual verification of the amounts from the petitioner did not occur until October of 1999.

3. The Department does not claim that the petitioner intentionally failed to report this income but rather that its ignorance of her husband's income was due to an inadvertent household error in reporting it. The petitioner claims that she did timely report the amounts and that the failure to correctly calculate Food Stamps for that period was the agency's error and that she should not be required to make repayment. She also claims that the family's many medical and other expenses make it a hardship to repay the Food Stamps and that she should receive a waiver of the repayment. It is not

necessary for purposes of deciding this case to determine whether the error was the household's or the Department's.

ORDER

The decision of the Department is affirmed.

REASONS

Under the federal Food Stamp regulations as adopted by the State of Vermont, the Department of Social Welfare is required to establish a claim against any household which has received food stamp benefits to which it was not entitled regardless of whether the agency or the household caused the overpayment. F.S.M. 273.18(a). DSW is required to take action on any overpayment which occurred 12 months or less since the overissuance was discovered including overpayments which occurred either because a household unintentionally failed to report correct or complete information on income or because the state agency failed to take prompt action on a change reported by the household. F.S.M. 273.18(b).

Under this regulation, an overpayment must be established when there was an overissuance regardless of whether it was an unintentional failure to report income or was a failure by the Department to take prompt action. The overpayment was

discovered in October of 1999. In that case, the Department is required to recalculate the income based on the new information regarding the family's actual income and to establish a claim for any amounts which were overpaid during the previous twelve months. F.S.M. § 273.18(6). The Department has concluded that the household was overpaid in August, September, and October of 1999, the three months prior to the discovery, and has recalculated the amounts. The petitioner has been notified of those amounts and has not presented any evidence contesting the calculations. There is no provision in the regulations to waive the establishment of this overpayment for hardship or any other reason.

The Department is also required by the regulations to attempt to collect overpayments in excess of \$35 per month. F.S.M. 273.18(d). It has a number of methods available to it for taking such action. However, if the family continues to participate in the food stamp program, the Department is required to collect outstanding amounts through reducing the monthly food stamp allotments. F.S.M. 273.18(g)(4). The amount to be collected by offset is the greater of \$10.00 or 10% of the total monthly food stamp allotment whether the overpayment was the result of an error by either the household or the agency. F.S.M. 273.18(g)(4)(i) and (ii). The

Department is thus justified in reducing the family's future Food Stamp benefits by 10% per month until the total amount is repaid.

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